In *Miller* v. *Norton,* the proposition was also laid down by way of *dictum* that the mere giving of credit to a depositor's account of a check does not constitute the bank a holder *for value,* but in order to have that effect, the credit must be drawn upon. For a discussion of this particular point, see 7 VA. LAW REV. 75.

The distinction between these two propositions must be carefully noted. To be a holder in due course, one must (1) have legal title, and must have taken the instrument (2) before maturity, (3) without notice of existing equities, and (4) for valuable consideration.[10] The question generally arises between a bank which has handled the paper and a creditor of the drawee; the decision then turns on whether the bank or the drawer has legal title to the proceeds, in which latter case the creditor may garnish or attach the proceeds. This is the main point of decision in the Virginia cases cited above. The further interesting question as to whether a bank is a holder *for value* by the mere giving of credit for a check on a depositor's account is governed by different principles.[11] In Virginia, there is no case directly covering this point; the *dictum* in *Miller* v. *Norton* and its reiteration in *Fourth National Bank* v. *Bragg* are the only authorities. It was the latter point which was discussed in 7 VA. LAW REV. 75.

E. W.

RECORDATION OF CONDITIONAL SALES CONTRACTS UNDER VA. CODE, 1919, § 5189.— § 2462 of the Code of 1887 provided in part as follows:

> "Every sale or contract for the sale of goods or chattels, wherein the title is reserved until the same be paid for in whole or in part, or the transfer of the title is made to depend on any condition, and possession be delivered to the vendee, shall be void as to creditors of, and purchasers for value without notice from, such vendee, unless such sale or contract be evidenced by writing executed by the vendor, in which the said reservation or condition is expressed, and until and except from the time the said writing is duly admitted to record in the county or corporation in which said goods or chattels may be. . . ."

The General Assembly of 1889-'90, in amending the section, required only a memorandum setting forth certain essential facts to be docketed where it was previously necessary to record the original writing.[1] The latter was to be indorsed with the words "memorandum docketed" by the clerk. Further changes were made in the section by the Acts of 1893-'94 and 1904, but they are not pertinent to this discussion.[2]

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[10] N. I. L. § 52; Va. Code, 1919, § 5614.
[11] Cf. 3 R. C. L. 524 and 3 R. C. L. 1055.
[1] Acts, 1889-'90, p. 108.
[2] Acts, 1893-'94, p. 422; Acts, 1904, p. 96.

The Code revisors made several material changes in the existing provisions. The original writing itself was again required to be recorded and had to be acknowledged or attested by a subscribing witness as to both the vendor and vendee. It was to be recorded in the miscellaneous lien book, and admission to record was not considered as effected unless and until the writing was properly indexed according to law. The section number under the Code of 1919 is 5189. At the special session of 1919, the General Assembly once more reversed itself in making it necessary to record merely a memorandum of the writing evidencing the contract and leaving the recordation requirements similar to those provided for by the Acts of 1889-'90, except for the provision declaring the indexing of the writing prerequisite to complete admission to record, which remained.[3] It has been suggested that the reason for the change was the excessive expense entailed in recording the whole writing and having it properly attested. This constant wavering on the part of the legislature as to this particular point as well as the changes made in other parts of the section strongly indicate that the questions involved have caused much discontent.

Due in all probability to this continuing discontent, the section was changed again in 1920 and made to read in part as follows:

> "Every sale, or contract for the sale of goods and chattels, wherein the title thereto, or a lien thereon, is reserved, until the same be paid for, in whole or in part, or the transfer of title is made to depend on any condition, where possession is delivered to the vendee, shall, in respect to such reservation and condition be void as to creditors of the vendee who acquire a lien upon the goods and as to purchasers from the vendee, for value, without notice, from such vendee unless such sale or contract be evidenced by writing, signed by the vendor and the vendee, setting forth the date thereof, the amount due, when and how payable, a brief description of the goods and chattels, and the terms of the reservation or condition; and until and except from the time a memorandum of said writing, setting forth the name of the vendor and vendee, the date thereof, the amount due thereon when and how payable, and a brief description of said goods and chattels is within five days after the delivery of the goods to the vendee, filed for docketing with the clerk of the county or corporation, where deeds are admitted to record, as provided by law, in which said goods and chattels may be, and it shall be the duty of such clerk to endorse on such contract the words "memorandum filed and docketed" together with the day and hour of such filing with the signature of the clerk affixed thereto; . . ." [4]

It is difficult to determine the actual significance of the phrase

[3] Acts, 1919, p. 40.

[4] Acts, 1920, p. 398.

"within five days after the delivery of the goods to the vendee," taken in connection with the words "until and except" which precede it. It would seem extremely improbable that the legislative intent was to prevent the class of sales and contracts under consideration from ever afterwards being recorded as to lien creditors and subsequent purchasers for value without notice, simply because the transaction was not filed for docketing within five days after the vendee had obtained possession of the property. Yet if the phrase in controversy is to be given any interpretation whatsoever and not totally disregarded this would appear to be the only possible meaning from a grammatical standpoint. Such a construction would not only work a serious injustice to vendors but would likewise run counter to the very theory of the title or lien which the statute was originally designed to protect. Until rights adverse to those of the vendor have been acquired, it is hard to understand why his rights can be forever nullified as to all potential adverse claimants of a proper kind that may appear in the future, while the title or lien still remains valid as to the vendee. Omitting the phrase entirely would still leave the sense of the clause complete and in close accordance with the previous provision of the Acts of 1919. Unquestionably it seems that if any five day period was meant to be inserted it was for the purpose of giving the vendor a brief period of grace in which to record his sale or contract. If this be the meaning intended, it is obscured in the rather confused rhetoric of the section as it stands. Upon search being made, no five day period has been discovered in connection with the transactions under observation in previous statutes. It is to be earnestly hoped that the apparent ambiguity which exists on the face of the present statute will be clarified at the next session of the General Assembly.

M. T. S.

DIVORCE—REMARRIAGE OF SAME PARTIES—VA. CODE, 1919, § 5113.—The Virginia Code of 1919, § 5113, provides as follows: "On the dissolution of the bond of matrimony * * * neither party shall be permitted to marry again for six months from the date of such decree, and such bond of matrimony shall not be deemed to be dissolved as to any marriage subsequent to such decree * * * until the expiration of such six months."

This section of the Code is new and no case has as yet been decided by the Court of Appeals under it. However, there are similar statutes in a good many States. These are not penal statutes for they apply to the innocent as well as the guilty, but were passed in order to discourage divorces. They are based on grounds of public policy, viz., that it is bad for society that divorced parties should be immediately able to contract new marriages.[1]

[1] Lanham *v.* Lanham, 136 Wis. 360, 117 N. W. 787, 17 L. R. A. (N. S.) 804, 128 Am. St. Rep. 1085; Wilson *v.* Cook, 256 Ill. 460, 100 N. E. 222.